

**Before the Additional District Court, North Paravur**

O. P. (GUARDIAN) No. 43/2008

(In the matter of minors Vishnu and Jishnu)

*Petitioners:—*

1. Nirmala,  
Wife of late Shri Unnikrishnan,  
Payithara House,  
Koottukad,  
Chendamangalam Village.
2. Anirudhan,  
s/o Subramanian,  
Payithara House,  
Koottukad,  
Chendamangalam Village,  
Paravur Taluk.

*Respondents:—*Nil.

Take notice that the petitioners has presented an application to this Court for permission to sell four Cents of landed properties comprised in Sy. No. 391/3 of Chendamangalam Village, vested to the petitioners and the minors by way of inheritance and succession and to expend the sale proceeds for construction of a house to the minors and that if any one has any objection for the same has to appear on 4-11-2008 at 11 a. m. in this Court in person or by duly authorised agent/pleader and failing which the said application will be decided in his/her absence.

North Paravur,  
17-9-2008.

K. MANOHARAN,  
*Counsel for Petitioners.*

**In the Court of the Subordinate Judge, Koyilandy**

*Present :* Sri C. Balan, Subordinate Judge,  
Thursday, the 10th day of April, 2008  
21st day of Chaithram, 1930.

I. P. 1/2001

*Petitioner:*

*Between*

Panthapilakkool Arya Devi,  
d/o. Madhavi Amma/Padmanabhan Nair,  
aged 42 years,  
residing at Thazhekandy,  
No occupation,  
Kunnathara Amsom,  
Ollur Desom,  
Koyilandy Taluk,  
Kozhikode District.

*Respondents:*

*And*

- 1.. Assistant Secretary,  
Kerala State Housing Board,  
Kozhikode Housing Unit,  
Chakkarathkulam,  
Kozhikode-6,  
Kozhikode Taluk,  
Kozhikode District.
- 2.. Secretary,  
Naduvannur Regional Sahakarana Bank,  
Naduvannur,  
Naduvannur Amsom Desom,  
Koyilandy Taluk,  
Kozhikode District.

3. Puthiyottil Meethal Balakrishnan Nair,  
s/o Kalliani Amma,  
aged 47 years,  
Residing at Arattankani Meethal,  
Agriculturist,  
Kunnathara Amsom,  
Ollur Desom,  
Koyilandy Taluk,  
Kozhikode District.
4. Kuzhiparambil Meethal  
Prabhakaran Nambiar,  
s/o Sekharan Nair,  
aged 32 years,  
Merchant,  
Residing at Kunnathara Amsom,  
Ollur Desom,  
Koyilandy Taluk,  
Kozhikode District.
5. The Village Officer,  
Ulliyeri,  
Kunnathara,  
Kannoore Desom,  
Koyilandy Taluk,  
Kozhikode District.
6. Tahsildar,  
Revenue Recovery,  
Vatakara,  
Vatakara Amsom, Desom,  
Vatakara Taluk,  
Kozhikode District.
7. Government of Kerala,  
Represented by District Collector,  
Kozhikode Civil Station,  
Malaparambu,  
Malaparambu Amsom, Desom,  
Kozhikode Taluk,  
Kozhikode District.

This petition coming on 31st day of March, 2008 for final hearing before me in the presence of Sri K. P. Damodaran, Advocate for the petitioner, and of Sri Vinod Singh Cheriyan, Advocate for 1st respondent, Sri M. Ummer, Advocate for 2nd respondent, of Sri. P. Sankaran Elattery, Advocate for respondents, 3 and 4, and of Sri K. Sathyan, A.G. P. for the respondents 5, 6 and 7 and having stood over to this day for consideration this court passed the following:

**ORDER**

Petition under section 10 of the Insolvency Act.

2. The petitioner's case in brief is as follows:—

The petitioner who has 3 children has no occupation and she had to look after her personally and she is not in a position to go for any sort of work. Her husband is a coolie doing casual wage works, the earnings from which would not suffice to meet the day today expenses of the family. Due to the financial difficulties, the petitioner borrowed the amount shown in the A schedule to this petition. The entire assets belonged to

the petitioner are shown in the B schedule. Neither the petitioner, nor her husband have any property and building apart from one shown as B schedule. This petitioner is not able to pay off the amount due to the creditors. Some of the respondents filed suits for realisation of the amount. The banks to whom amounts are due have initiated execution proceedings for sale of property. If the property is sold, irreparable injury and loss would be caused to the petitioner who is not able to dispose of the property and pay off the loan amount. Even if the property is sold, she would not be able to pay of the entire amount due to the respondents. This petitioner has not committed any act of insolvency and she had no occasion to file a petition to get herself adjudged as insolvent. So, she prays for an order declaring and adjudicating her as insolvent and for appointing an official receiver to take possession and control of the assets of the petitioner described in B schedule and for realisation and distribution among the creditors.

3. The 1st respondent filed counter statement contending that the petition is not maintainable since mandatory provisions under section 139 of the Kerala State Housing Board Act, 1971 is not complied with. A loan of Rs. 2 lakhs was sanctioned to the petitioner and for the said purpose, she had mortgaged her property having an extent of 16½ cents by a mortgage deed executed by her and the loan was sanctioned on the basis of the terms and conditions contained in the mortgage deed. Before sanctioning the loan, the petitioner was required to produce some documents relating to her property, income etc. The income certificate issued by the Village Officer would show that the income of the petitioner is Rs. 55,800. Her husband is having an income of Rs. 8,400 from the property and Rs. 45,000 from the business and the petitioner is having an income of Rs. 2,400 from the property. The loan was sanctioned on the strength of the above said certificates. As per the condition in the mortgage deed, the petitioner was bound to repay the loan amount in 168 monthly instalments at the rate of Rs. 3,933. But after availing the loan amount, she has not paid even a single instalment. When she made default, this respondent initiated Revenue Recovery Proceedings. This petitioner has filed the petition on experimental basis. This respondent has got primary charge of the property of the petitioner. The Board is entitled to get first preference in getting the amount out of R. R. Proceedings. So, the petition may be dismissed.

4. The 2nd respondent filed counter statement contending that the petitioner has availed loan from the 2nd respondent bank, and hence, she is liable to pay a sum of Rs. 5,566.40 with interest. The averment that her property is not sufficient to satisfy the

said amount is incorrect.

5. The 3rd respondent filed counter statement contending that the petitioner owes a sum of Rs. 25,000 to the respondent borrowed as per pro-note dated 30-1-1999. The petitioner is liable to pay the said amount.

6. The 4th respondent filed counter statement stating that the petitioner, who owes a sum of Rs. 30,000 borrowed as per pro-note dated 20-6-1999 and hence she is liable to pay the amount.

7. 5th respondent and 6th respondent filed separate counter statement raising some sort of contentions. It was as per the requisition of the 1st respondent, Revenue Recovery Proceedings were initiated. The action of this respondents is legal and valid.

8. This Court as per Order in IP 1/2001 dated 14-12-2005 after considering the oral evidence of PW1 and RW1 and documentary evidence marked as Ext. A1, A2 and B1 to B8 dismissed the petition finding that the petitioner has not been able to establish that she is entitled to get the relief as sought for.

9. Aggrieved by the order passed by this Court, the petitioner filed AS 137/06 before the District Court, Kozhikode and the District Judge, Kozhikode as per Judgement in AS 137/06 dated 11-6-2007 set aside the order passed by this Court and case is remitted to this Court with a direction to pass a formal order of adjudication and initiate further steps in the matter. It is held by the District Court that the petitioner was not capable of discharging her liability and that the petitioner was entitled to declaration.

10. Heard both sides.

11. As stated above, the District Court directed this Court to pass a formal order of adjudication and initiate further steps in the matter. In view of the said direction, the petition is allowed as follows:—

- (1) The petitioner is declared as insolvent.
- (2) The petitioner shall apply for her discharge within 3 months from the date of this order.
- (3) The petitioner shall take steps for publication of order of adjudication as contemplated u/s 31 of the Insolvency Act.
- (4) Order of appointing Receiver will be passed separately.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open Court this the 10th day of April, 2008)

(Sd.)

*Sub Judge.*

Exhibits and witness on either side :— Nil.

(Sd.)

*Sub Judge.*

**In the Court of the Subordinate Judge, Koyilandy**

INSOLVENCY PETITION NO. 1/2001

**IA 1023/2008**

*Petitioner/Debtor:—*

Panthe Pilakkuol Arya Devi,  
aged 45 years,  
d/o Madhavi Amma,  
Padmanabhan Nair,  
Kunnathara Amsam,  
Ollur Desam,  
Koyilandy Taluk

*Respondents:—*

1. Assistant Secretary,  
Kerala State Housing Unit,  
Chakkarotheikulam,  
Kozhikode-6,  
Kozhikode Taluk and District
2. Secretary,  
Naduvannur Regional Sahakarana Bank,  
Naduvannur,  
Naduvannur Amsom Desam,  
Koyilandy Taluk,  
Kozhikode District
3. Puthiyottil Meethal Balakrishnan Nair,  
s/o. Kalliani Amma,  
aged 48 years,  
Residing at Arattamkandi Meethal,  
Kunnathra Amsom,  
Ollur Desam,  
Koyilandy Taluk,  
Kozhikode District
4. Kuzhiprambil Meethal,  
Prabhakaran Nambiar,  
s/o Sekharan Nair,  
aged 33 years,  
Merchant,  
Kunnathara Amsam,  
Ollur Desam,  
Koyilandy Taluk,  
Kozhikode District
5. The Village Officer,  
Ulliyeri,  
Kunnathara,  
Kannoore Desam,  
Koyilandy Taluk

6. Tahsildar,  
Revenue Recovery,  
Vadakara,  
Vadakara Amsam,  
Desam,  
Vadakara Taluk
7. Government of Kerala,  
Represented by District Collector,  
Kozhikode Civil Station,  
Malapramba,  
Kozhikode Taluk

*Creditors:—*

1. Assistant Secretary,  
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aged 33 years,  
Merchant,  
Kunnathara Amsam,  
Ollur Desam,  
Koyilandy Taluk,  
Kozhikode District

Take notice that the above named insolvent has applied at the court for his discharge and that the court has fixed the 25th day of October 2008 at 11 a.m.

Koyilandy,  
29-9-2008.

(Sd.)  
Subordinate Judge.

**In the Court of the Subordinate Judge, Koyilandy**

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aged 33 years,  
Merchant,  
Kunnathara Amsam,  
Ollur Desam,  
Koyilandy Taluk,  
Kozhikode District

Under-section 31 of insolvency Act 1955 notice is hereby given that the above mentioned Petitioner has been adjudged insolvent on 10-4-2008 and that he should apply for discharge on or before, 25-10-2008.

Creditors should prove their claims with in one month from the date of Publication of this notice in the Gazette, by delivering or sending by Registered Post to the Receiver an affidavit in form No. 5 of the Kerala insolvency Rules. They should also give the Receiver all necessary instruction and provide him with funds where necessary.

Dated the 29th day of September, 2008.

(Sd.)

*Judge.*